

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN COSTELLO,

Defendant.

NO. CR22-160 RSM

**UNITED STATES' SENTENCING
MEMORANDUM**

Over the span of more than three years, defendant Justin Costello engaged in several large-scale, wide-ranging fraudulent schemes. Costello provided banking services to marijuana businesses, and then stole \$3.6 million of his clients' funds. Costello defrauded local victims – some of whom he befriended – into investing in companies he controlled, resulting in \$6 million in losses. Costello defrauded another 7,500 public investors who bought stock in a public company he controlled, at a loss of another \$25 million. Finally, Costello brazenly committed a series of stock pump-and-dumps for over \$600,000 personal profit with complete disregard to the harm he was causing to the financial market. While Costello's frauds allowed him to live a lavish

lifestyle, his conduct left devastation in its wake. All told, Costello's actions caused over \$35 million in loss to the victims of his offenses.

Given his conduct and the harm it caused, the United States respectfully requests that the Court impose a custodial sentence of 120 months to be followed by a three-year term of supervised release and order restitution in the amount of \$35,307,160.50¹ as this sentence is sufficient, but not greater than necessary, to meet the goals of sentencing.

I. BACKGROUND

A. Offense Conduct

1. Costello defrauds marijuana businesses

Between April 2019 and March 2020, defendant Justin Costello, through his company Pacific Banking Corp., entered into agreements with three marijuana businesses to provide them banking services. Presentence Investigation Report (PSR) ¶15. In these agreements, Costello promised to only execute transactions authorized by the marijuana business. *Id.* Based upon these agreements, these marijuana businesses collectively gave Costello, through Pacific Banking Corp., millions of dollars. PSR ¶20. Shortly after the marijuana businesses gave him their funds, and contrary to his representations, Costello began diverting a portion of the marijuana businesses' funds to Costello's other companies or for their benefit, to make payments on behalf of other banking clients, and for Costello's personal benefit. PSR ¶16. Costello's fraudulent diversion of funds continued from May 2019 through July 2021. *Id.* From May 2019 through September 2022, Costello provided the marijuana businesses with account statements that falsely showed that their funds were safe and under his control. PSR ¶17.

As a result of Costello's misconduct, one of the marijuana businesses filed a lawsuit in the U.S. District Court for the Northern District of California. In September

¹ While the United States has worked hard to finalize the restitution amount in this case, the United States is still evaluating one victim's claim for additional restitution. To the extent the United States seeks additional restitution for this victim, the United States will inform Costello's defense counsel, the Probation Office, and the Court prior to sentencing.

2022, Costello filed a false Declaration in that lawsuit claiming that \$2,923,858.13 of the marijuana businesses funds were in a bank account at Sound Credit Union in Tacoma, Washington. PSR ¶18. At the time, the bank account had a balance of \$15.35. Id. Based on Costello fraudulent conduct, the marijuana businesses collectively lost \$3,694,905.73. PSR ¶20.

2. Costello's fraudulent solicitation of private investors

Between February 2018 and May 2021, Costello solicited several investors to invest in companies Costello controlled, including GRN Holding Corp. and Hempstrack, Inc. PSR ¶¶21, 29. Costello made numerous materially misleading statements concerning his educational and employment background, qualifications, assets, and investment strategy when soliciting investors. PSR ¶22. Specifically, Costello falsely claimed:

- He had a Master's in Business Administration from Harvard Business School;
- He was a billionaire;
- He managed money for wealthy individuals, including a Saudi sheikh;
- He was in the Special Forces and had been wounded serving overseas;
- He had over 14 years of experience on Wall Street; and
- He was the CEO of GRN Funds, LLC, a private equity and hedge fund with over \$1 billion in assets under management.

Id. During one investor presentation to potential Hempstrack investors, Costello falsely asserted that he worked in Seattle, but also had offices in New York and London. PSR ¶29. He also fraudulently claimed to have over 400 clients in the marijuana industry for which he provided banking services. Id.

As described more fully below in the discussion concerning the seriousness of the offense, Costello befriended several of his victims as part of his scheme to defraud. He preyed upon their trusting nature to separate them from their funds. In reliance on Costello's fraudulent statements, approximately 29 investors collectively lost approximately \$6 million as part of Costello's fraud. During this time, Costello lived in

1 an expensive condominium in Bellevue, drove expensive cars (including a McLaren), and
 2 otherwise lived a lavish lifestyle. None of this money was earned; it was fraud proceeds.

3 **3. Costello's fraud on public investors regarding GRN Holding Corp.**

4 In 2019, Costello orchestrated a reverse merger² of GRN Funds, LLC into a
 5 publicly traded shell company called Discovery Gold Corporation. PSR ¶24. Notably,
 6 Costello used funds diverted from the largest marijuana company victims described
 7 above to pay for the \$300,000 purchase price for Discovery Gold. On July 1, 2019,
 8 Discovery Gold, through Costello, its new CEO, filed a Form 8-K with the Securities and
 9 Exchange Commission announcing the merger. Id. The Form 8-K, which Costello signed
 10 as CEO, contained material misrepresentations, including falsely describing Costello as a
 11 graduate of the University of Minnesota with a degree in Public Business Administration
 12 and as a graduate of the Harvard Business School and describing GRN Funds, LLC as a
 13 “private equity and hedge fund.” Id. GRN Funds, LLC never registered with the SEC as a
 14 hedge fund. Furthermore, at the time the Form 8-K was filed, the GRN Funds’ website
 15 falsely stated that it had \$1.15 billion in assets under management. Id. While the
 16 company did file an Amended Form 8-K on October 2, 2019, in an attempt to correct the
 17 misrepresentations concerning Costello’s educational background, the Amended Form 8-
 18 K represented that Costello attended Harvard University but did not graduate. Id. This
 19 was also misleading. Costello attended one course in Harvard’s continuing education
 20 program.

21 In addition to the false representations at the time Costello took control of the shell
 22 company, Costello continued to make material misrepresentations to the investing public
 23 concerning GRN Holding Corp. PSR ¶25. Starting in November 2019, and continuing
 24 through at least July 2020, Costello, through GRN Holding Corp., repeatedly issued
 25 materially false press releases concerning GRN Holding Corp.’s merger with other
 26 companies. PSR ¶¶ 25-27. Costello owned, controlled, or was affiliated with all of them.

27 ² A reverse merger is when a private company merges with a company with stock that is publicly-traded. Usually, the publicly-traded company is a “shell” with no legitimate business. Rather, it exists in the hope that a private company will purchase it in order to get access to the financial markets.

1 Id. On November 12, 2019, Costello caused GRN Holding Corp. to issue a press release
 2 stating that the company had signed non-binding Letters of Intent to acquire 10
 3 companies, including Pacific Banking Corp. PSR ¶25. The press releases touted how the
 4 acquisition of these companies would make GRN Holding Corp. more valuable. Id.
 5 Throughout January and February 2020, GRN Holding Corp., again through Costello,
 6 issued ten press releases announcing the completion of due diligence for each company.
 7 Id. Starting in July 2020, Costello began announcing binding Letters of Intent for each
 8 company. PSR ¶26. Contrary to the public statements in the press releases, Costello never
 9 completed the acquisitions of these companies. PSR ¶27. Furthermore, the companies
 10 had little to no revenue or assets. Id.

11 Between July 1, 2019, when Costello filed the Form 8-K announcing the reverse
 12 merger, and May 18, 2021, when Costello resigned as CEO, thousands of investors
 13 purchased and sold shares of GRN Holding Corp. based on Costello's fraudulent
 14 statements. PSR ¶28. Over 7,500 of these investors suffered a net loss trading GRN
 15 Holding Corp. shares. These victims collectively lost over \$25 million. Id.

16 **4. Costello's fraudulent pump-and-dump scheme**

17 While he was engaged in the fraudulent conduct described above, Costello also
 18 engaged in stock manipulation through a series of pump-and-dump schemes. PSR ¶32.
 19 Between October 2019 and January 2021, Costello purchased large blocks of stock of
 20 thinly traded penny stocks at very low prices. PSR ¶32. Costello recruited, and paid,
 21 another individual to fraudulently promote, or pump, the stocks by making materially
 22 false statements concerning the companies by tweeting on Twitter. PSR ¶33. As the
 23 stocks' prices were increasing (after unwitting investors purchased shares based on the
 24 fraudulent tweets), Costello sold his shares into the market at the artificially inflated
 25 prices and reaped significant profits. Id. In fact, Costello made \$625,092.02 through his
 26 pump-and dump schemes. PSR ¶34.

27 **B. Procedural History**

On September 28, 2022, the Grand Jury returned a twenty-five count Indictment
 charging Costello with numerous counts of securities fraud and wire fraud. When the

1 Indictment was returned, the United States had an agreement with Costello's counsel at
 2 the time for Costello to self-surrender to the FBI. Consistent with that agreement, the
 3 United States informed Costello's counsel that the Grand Jury had returned an
 4 Indictment, and that Costello needed to surrender to the FBI the following morning. PSR
 5 ¶36. After conferring with his attorney, Costello agreed to surrender to the FBI in San
 6 Diego the following morning. Id. Costello failed to appear and surrender to the FBI the
 7 next morning and instead attempted to flee prosecution. Id.

8 Over the next few days, the United States, together with the FBI, worked
 9 diligently to locate Costello. PSR ¶ 37. For example, the United States obtained search
 10 warrants to track cell phones associated with Costello, but Costello had turned the phones
 11 off. Id. Thereafter, the United States and FBI obtained a search warrant to track the car
 12 Costello was driving through its satellite radio signal. Id. On October 4, 2022, the United
 13 States and FBI located Costello at a location in El Cajon, California, not far from the
 14 United States/Mexico border, and the FBI arrested Costello. Id. Within days, the FBI
 15 recovered a black backpack Costello had at the time of his arrest. Id. In short, the
 16 backpack was Costello's fugitive toolkit. Inside the backpack, Costello had a fake ID
 17 with his picture, but in the name of another individual; \$60,000 in United States currency;
 18 Mexican pesos; debit and credit cards in both Costello's name and in the name on his
 19 fake ID; jewelry; and gold bars. Dkt. 14. Costello has been detained since his arrest.

20 II. SENTENCING GUIDELINES RANGE

21 The United States agrees with the Sentencing Guidelines calculations in the
 22 PSR which are consistent with the Guidelines stipulated to by the parties in the
 23 Plea Agreement. PSR ¶¶51 – 63. The applicable Guidelines are:

24 Base Offense Level under USSG § 2B1.1(a):	7
25 Enhancement for loss of more than \$25 million and less 26 than \$65 million under USSG § 2B1.1(b)(1)(K):	+22
27 Enhancement for 10 or more victims under USSG § 2B1.1(b)(2)(A)(i):	+2

1 Enhancement for sophisticated means
2 under USSG § 2B1.1(b)(10): +2

3 Enhancement because offense involved a violation of
4 securities law and, at the time of offense, the defendant
5 was an officer or director of a publicly traded company
under USSG § 2B1.1.(b)(20)(A): +4

6 Acceptance of Responsibility under
7 USSG § 3E1.1(a) and (b): -3

8 Total Offense Level: 36

9 Costello has one criminal history point and is a CHC I. Thus, the advisory
10 Sentencing Guidelines range is 188 to 235 months.

11 **III. FACTORS RELATED TO SENTENCING RECOMMENDATION**

12 The United States respectfully requests that the Court sentence Costello to a term
13 of imprisonment of 120 months as it is sufficient, but not greater than necessary, to meet
14 the goals of sentencing. A 120 month sentence is warranted considering all the
15 sentencing factors under Title 18, United States Code, Section 3553(a), including: (1) the
16 serious nature and circumstances of the offense; (2) Costello's history and characteristics;
17 (3) the need for the sentence to promote respect for the law and to provide just
18 punishment; (4) the need to afford deterrence to other criminal activity; and (5) the need
19 to avoid unwarranted sentencing disparities with similarly situated defendants.

20 **A. Nature and Circumstances, and Seriousness of the Offense**

21 A sentence of 120 months imprisonment reflects the serious nature and
22 circumstances of Costello's wide-spread fraudulent conduct. For more than three years,
23 Costello engaged in a variety of fraudulent conduct targeting marijuana businesses, his
24 "friends and family", and investors who bought and sold securities in the public markets.
25 Costello's fraud caused significant financial harm. All told, victims lost over \$35 million
26 as part of Costello's schemes. While the total amount alone shows the seriousness of the
27 offense, the financial impact on individual victims further demonstrates the seriousness of

1 the offense. Numerous victims submitted victim impact statements describing the
 2 financial devastation resulting from Costello's illegal conduct. While it is important for
 3 the Court to consider every victim's statement, the following selected statements
 4 highlight the impact felt by many victims:

- 5 • "Mr. Justin Costello's act has cost me thousands of dollars in damages. I
 6 wanted/could use the money to pay for my lower back surgeries and
 7 medical bills. I am a disabled man who served in the military airlift
 8 command flights." – Victim A.L.
- 9 • "I start [sic] to invest GRN because of Twitter information from Justin
 10 Costello for his future plan and great success stories in his life. To prepare
 11 for my son's college tuition and for my families, I invested all of my money
 12 but now all in vain. Still I suffer from debt collectors due to this damage..."
 13 – Victim B.K.
- 14 • After almost 3-4 months of purchasing this investment (October 2019 to
 15 January 2020), the stock lost approximately 85-90% of its value [and] that
 16 put me in a difficult spot financially. From January 2020 to April 2020...I
 17 picked up some extra shifts and spent some time "catching up" to have that
 18 amount of savings available to me once again. I was afraid I would not be
 19 able to pay my rent [and] other living expenses at times..." – Victim D.S.
- 20 • "I started with this stock, listening to Justin's videos, following his advice. I
 21 invested my 401 [sic] into his GRNF marijuana stock. I was retired, and
 22 after losing that, I had to go back to work. I lost 45,000... I had to sell my
 23 boat, which I had bought to enjoy my retirement!" – Victim G.C.

24 These only a few examples of the devastating financial impact caused by Costello's
 25 fraud. As set forth in many of the victim impact statements, numerous victims
 26 experienced similar financial ruin by trusting Costello.

27 But unfortunately, like so many other frauds, the impact of Costello's fraudulent
 conduct goes well beyond financial loss. Costello's deceit – about his background, his
 education, and his purported success – was designed to convince unwitting investors to
 trust him. And trust him they did. But when lies and fraud are exposed, victims are left

1 with significant emotional and psychological damage. They blame themselves for being
 2 gullible and overly trusting. The resulting stress, anxiety, and sense of betrayal causes
 3 great emotional and psychological harm, and damages the victims' relationships with
 4 friends, family, and others. Like the impact of the financial harm above, the victims' own
 5 statements describe this pain:

- 6 • “The emotional impact of Justin Costello’s actions have been equally
 7 devastating [as to the financial impact]. I feel betrayed and violated by his
 8 actions, which have caused emotional distress and turmoil. I have lost trust
 9 in people and have been unable to sleep or eat properly since discovering
 10 his fraudulent actions. The stress and anxiety caused by this ordeal have
 11 affected my ability to function normally, and I have had to seek
 12 professional help to deal with the emotional fallout.” – Victim A.S.
- 13 • “I had told several of my friends and family to invest into this stock. Since
 14 my friends and family trust my judgment, they made large investments into
 15 this stock as well. Since this stock cost everyone everything they invested
 16 none of my friends and family trust in my judgment any longer. I still get
 17 harassed by them to this day.” – Victim K.H.
- 18 • “My financial loss is much less than the emotional distress that was caused
 19 personally by Justin Costello.” – Victim R.H.
- 20 • Obviously I lost money, nothing to change my life but just enough to cause
 21 concern and stress on me and my wife. It has made me more skeptical of
 22 people and not trust others like I used to. In a time of my life where I
 23 should be looking towards retirement I have to question other peoples
 24 morals and character.” – Victim S.V.
- 25 • The financial loss impacted me greatly as this was a significant portion of
 26 my portfolio. This caused a great deal of stress and anxiety as I tracked all
 27 of the developments with GRNF and Justin closely.” – Victim I.S.

28 These are only five examples of the emotional, physical, and psychological
 29 damage Costello caused his victims – his thousands of victims. The victim impact

1 statements in this case are powerful evidence of the widespread devastation for which
2 Costello is responsible.

3 **B. History and Characteristics of the Defendant**

4 Defendant Costello's history and characteristics also support a sentence of 120
5 months imprisonment. Costello's crimes were driven by hubris and greed. As Costello
6 acknowledges in his own letter to the Court, this crime was a result of an individual
7 "chasing after success, chasing after money, who couldn't say no to money, and who
8 made the wrong decisions." Those "wrong decisions" were not isolated events, but rather
9 part of a three-year crime spree involving multiple types of fraudulent conduct targeting a
10 wide-ranging number of victims. During his scheme, Costello targeted businesses, friends
11 and family, and the investing public. Based upon the facts Costello admitted in his plea
12 agreement, it is clear his desire for wealth was matched by his ability to commit all types
13 of fraud.

14 Beyond the fraudulent schemes, Costello's conduct shows a pattern of brazen
15 dishonesty even after his schemes were exposed. For example, one of the marijuana
16 businesses that Costello victimized sued him in the U.S. District Court for the Northern
17 District of California. Rather than accept responsibility for what he had done, Costello
18 chose to double down on his fraud. In September 2022, Costello filed a false declaration
19 in that litigation in which he stated that over \$2 million of the victim marijuana
20 business's funds were in a bank account in Tacoma, Washington. In reality, there was
21 only about \$15 in the account.

22 In addition, after being informed of the criminal investigation, advised by counsel,
23 and afforded the opportunity to self-surrender, Costello decided to attempt to flee from
24 prosecution. When he was apprehended miles away from the Mexican border, he had a
25 bag with \$60,000 in U.S. currency, Mexican pesos, debit and credit cards and checks, and
26 a fake ID.

27 There are little to no mitigating factors in Costello's history and characteristics.
Costello had an overall positive childhood. PSR ¶¶75, 85. While Costello's father had

1 troubles with alcohol, Costello's father and mother both worked, and the family was
 2 financially stable. Id. Costello has a college degree and was in student government in
 3 college. PSR ¶77. Based upon Costello's statements to the Probation Office, it appears he
 4 had suitable employment after graduating from college. PSR ¶¶ 78-80. Shortly after
 5 moving to the Seattle area, however, Costello began his criminal conduct which spanned
 6 until shortly before his arrest.

7 **C. Need to Promote Respect for the Law and Provide Just Punishment for the**
 8 **Offense**

9 A sentence of 120 months is also needed "to promote respect for the law and to
 10 provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). Costello's
 11 widespread, persistent, and damaging fraud demands a lengthy sentence.

12 **D. Need to Protect the Public from Further Crimes and to Afford Adequate**
 13 **Deterrence**

14 A 120 month sentence is also necessary to protect the public from further crimes
 15 of the defendant and deter him, and the public, from engaging in similar criminal activity
 16 in the future. Given the length of Costello's fraudulent activity and his actions before and
 17 after Indictment, the Court cannot be assured that Costello will refrain from further
 18 criminal activity in the future. Thus, a significant prison sentence will both protect the
 19 public from Costello's future crimes and hopefully deter him from engaging in criminal
 20 activity in the future. Likewise, a lengthy sentence will send a strong message to would-
 21 be fraudsters that their conduct will be justly punished.

22 **E. Need to Avoid Unwarranted Sentence Disparity Among Similarly Situated**
 23 **Defendants**

24 The recommended sentence of 120 months of imprisonment is also consistent with
 25 sentencing practice in this District. The United States considered recent sentences in
 26 similar cases before this Court and concluded that 120 months is appropriate and does not
 27 create unwarranted disparity. The recommended sentence is consistent with the
 28 sentencings in those cases.

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IV. CONCLUSION

For all of the reasons set forth above, the United States respectfully recommends the Court impose a custodial sentence of 120 months, to be followed by a three year term of supervised release, order restitution in the amount of \$35,307,160.50.

DATED: May 11, 2023.

Respectfully submitted,

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s/ Michael Dion

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